

REMARKS

This application was originally filed on 21 December 2000 with sixteen claims, two of which were written in independent form. No claims have been allowed.

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,347,361 to Kay. The applicant respectfully disagrees.

“A person shall be entitled to a patent unless,” creates an initial presumption of patentability in favor of the applicant. 35 U.S.C. § 102. “We think the precise language of 35 U.S.C. § 102 that, “a person shall be entitled to a patent unless,” concerning novelty and unobviousness, clearly places a burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103, see *Graham and Adams*.” *In re Warner*, 379 F.2d 1011, 1016 (C.C.P.A. 1967) (referencing *Graham v. John Deere Co.*, 383 U.S. 1 (1966) and *United States v. Adams*, 383 U.S. 39 (1966)). “As adapted to *ex parte* procedure, *Graham* is interpreted as continuing to place the ‘burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103’.” *In re Piasecki*, 745 F.2d 1468 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d at 1016).

“The prima facie case is a procedural tool which, as used in patent examination (as by courts in general), means not only that the evidence of the prior art would reasonably allow the conclusion the examiner seeks, but also that the prior art compels such a conclusion if the applicant produces no evidence or argument to rebut it.” *In re Spada*, 911 F.2d 705, 708 n.3 (Fed. Cir. 1990).

The applicant respectfully submits the Examiner has failed to meet the burden of proof

required to establish a *prima facie* case of anticipation. Section 2131 of the Manual of Patent Examiner's Procedure provides:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053, (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as in the claim under review. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

With respect to independent Claim 1, the Examiner failed to indicate how Kay shows, teaches, or suggests, and the passage cited by the Examiner provides does not address, any of the limitations of the claim. Claim 1 recites a display system while Kay teaches a rotation sensor output signal processor. The Examiner's rejection is unsupported by the prior art, fails to establish a *prima facie* case of anticipation, and therefore should be withdrawn.

Claim 9 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,432,693 to Anderson. The applicant respectfully disagrees.

With respect to independent Claim 9, the Examiner failed to indicate how Anderson shows, teaches, or suggests any of the limitations of the claim. The Examiner simply stated "Claim 9 is rejected under 35 U.S.C. § 102(b) as being fully met by Anderson." Claim 9 recites a motor controller, while Anderson teaches a digital pulse width modulator circuit with proportional dither. The Examiner's rejection is unsupported by the prior art, fails to establish a *prima facie* case of anticipation, and therefore should be withdrawn.

Claims 2-8 and 10 were objected to as being dependent upon a rejected base claim.

Claims 2-8 and 10 depend from Claims 1 and 9 and should be deemed allowable for that reason and on their own merits.

Contrary to the requirements of MPEP § 707, the Examiner failed to even mention Claims 11-16.

In view of the amendments and the remarks presented herewith, it is believed that the claims currently in the application accord with the requirements of 35 U.S.C. § 112 and are allowable over the prior art of record. Therefore, it is urged that the pending claims are in condition for allowance. Reconsideration of the present application is respectfully requested.

Respectfully submitted,



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